

Supreme Court asks whether rules trump rights in psychiatric boarding debate

By Sean Robinson

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The state argued for its rules. People with mental illness argued for their rights.

Justices from the Washington State Supreme Court didn't show their hand, but their questions suggested state rules don't trump every argument.

The spectacle played Thursday morning before the high court, in a debate over the practice of psychiatric boarding – detaining mentally ill people against their will in hospital emergency departments without treatment.

The patients – 10 of them, identified only by their initials – contend that psychiatric boarding violates their constitutional rights to individual mental-health treatment. The state argued procedure: the patients were using the wrong method to seek relief.

“The court shouldn't try to draw lines around this rule,” said deputy solicitor general Jay Geck, who represented the state Department of Social and Health Services.

“The recipe is simple: no treatment, no commitment,” said attorney Jennifer Sweigert, who represented the patients.

The argument stems from a March 2013 ruling in Pierce County Superior Court, which found that the state could not use overcrowding at state-certified mental-health facilities as an excuse to park people in local hospitals.

The ruling, first reported in 2013 by The News Tribune in a series of stories, touched off a statewide debate over mental-health policy. Psychiatric boarding has exploded in recent years, a byproduct of deep cuts in state mental-health services that sharply reduced the number of available psychiatric beds.

The result: a shortage of beds at existing mental-health facilities, additional pressure on an overburdened system, and in 2013, a total of 3,421 patients parked in hospital emergency departments, according to state numbers.

Under state law, people who present an imminent risk of harm to themselves or others can be committed and held by the state against their will. They're supposed to be held at evaluation and

treatment centers. Such facilities include the state's two mental hospitals and smaller facilities scattered throughout the state's 39 counties.

When beds aren't available, psychiatric boarding begins: patients are typically sent to hospital emergency departments. Sometimes they're placed in physical restraints. They wait for a psychiatric bed to open, but they don't receive mental-health treatment during their hospital stays, which can last for weeks and months in some cases.

The lack of treatment is the core of the argument facing the high court. Mental illness is not a crime; state and federal law guarantees patients the right to "individualized" mental-health treatment while they're detained.

In briefs presented to the court, state attorneys argued that patients argued the wrong way, and should have used different procedures. During oral argument Thursday, several justices questioned Geck's angle.

"Is it your position that you cannot challenge the statute?" asked Justice Sheryl Gordon McCloud.

Geck said patients could challenge the state statute – but not in a civil commitment hearing, and not without naming all the concerned parties.

Justice Steven Gonzalez cited statements in court briefs from hospitals, doctors and nurses, who said hospitals "have no psychiatrists on staff, we have no psychiatric nurses, we have no orderlies. We are basically warehousing people, including kids."

Geck said hospitals could provide such services, but "have chosen at times to simply tie their own hands behind their back."

Justice Susan Owens, noting the rare unanimity from the medical community, asked a similar question regarding psychiatric boarding.

"They all say this is not a good procedure," Owens said. "Are we just to ignore that? They are the experts."

Geck said state lawmakers were addressing the problem by increasing mental-health funding and adding psychiatric beds.

Ken Nichols, a Pierce County deputy prosecutor, also argued for the state's position. He said the patients and hospitals should have joined forces and filed suit against the state in a different forum.

Sweigert took her turn. Psychiatric boarding violated the civil rights of patients, she said. Citing testimony from earlier court proceedings, she noted that mental-health professionals explicitly said boarding was used in response to overcrowding, rather than medical need.

“Involuntary civil commitment while waiting in an emergency room is not authorized by statute,” she said. “Nor is it designed to cure or improve anyone’s mental health. This is not an exercise in professional judgment that someone needs to be in an ER.”

Justice Debra Stephens asked about options. Did the state have any?

Sweigert said yes. Individual counties – the providers of local mental-health services – could contract with neighboring counties for additional psychiatric beds. The state also had the authority to open additional beds at Western State Hospital if necessary.

Regarding procedure, Sweigert said patients had constitutional rights that allowed the argument to take place. The state couldn’t bypass those concerns.

“They’re essentially asking that this court not even decide the question,” she said.

“We are here because the State of Washington hauled my clients into court to have them civilly committed, and when they challenged the procedure and the commitment itself as unlawful, then the State of Washington turns around and says, ‘Oh no, you can’t challenge your commitment in this court that we’ve hauled you into in order to commit you.’”

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